

# SENATE BILL REPORT

## SB 6063

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As Reported by Senate Committee On:  
Agriculture & Rural Economic Development, February 24, 2009

**Title:** An act relating to eligibility of lands used for equestrian related activities for current use valuation programs.

**Brief Description:** Concerning eligibility of lands used for equestrian related activities for current use valuation programs.

**Sponsors:** Senators Ranker and Hatfield.

**Brief History:**

**Committee Activity:** Agriculture & Rural Economic Development: 2/23/09, 2/24/09 [DPS-WM].

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### SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

**Majority Report:** That Substitute Senate Bill No. 6063 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hatfield, Chair; Ranker, Vice Chair; Schoesler, Ranking Minority Member; Becker, Haugen, Jacobsen, Morton and Shin.

**Staff:** Bob Lee (786-7404)

**Background:** In November 1968 voters approved Amendment 53 to the State Constitution that allowed the Legislature to establish current use valuation for property tax purposes of farm and agricultural lands, timberlands and other open space lands which are used for recreation or for enjoyment of their scenic or natural beauty. The Open Space Taxation Act, enacted in 1970, deals primarily with farm and agricultural lands, and open space lands, and the chapter that deals primarily with timber and forest lands was enacted in 1971.

To qualify as "farm and agricultural land," separate criteria exists for each of three parcel categories:

- any contiguous parcels totaling 20 or more acres that are:
  - devoted primarily to the production of livestock or agricultural commodities for commercial production;
  - enrolled in the federal conservation reserve program; or

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- similar commercial activity as established by rule;
- any parcel between five and 20 acres devoted primarily to agricultural use which has produced gross income from agricultural use of at least \$200 per acre in three of the five years preceding the date of application;
- any parcel less than five acres devoted primarily to agricultural uses which has produced a gross income of at least \$1,500 in three of the five years preceding the date of application.

As shown above, the statute makes reference to agricultural commodity in some cases and to agricultural uses in other cases. The reason for the difference in the use of the terms are not discernable but may have legal significance to horse boarding operations.

Enrollment in the program affects the valuation of the land but the valuation of the buildings does not change.

Issues were raised in the fall of 2008 as to whether the land upon which horse boarding operations are located qualify for current use valuation under the Open Spaces Taxation Act. History indicates that a number of horse boarding operations have been included under the "farm and agricultural land" category and have been assessed based on current use valuation. The Department of Revenue held two public hearings to obtain input from the public on the question. On December 31, 2008, the department adopted an emergency rule that modified the existing agency rules.

The longstanding rule defined "commercial agricultural purposes" as "the use of land on a continuous and regular basis, prior to and subsequent to application for classification, that demonstrates that the owner or lessee is engaged in and intends to obtain through lawful means, a monetary profit from cash income received by engaging in the following commercial agricultural activities...

- (ii) Feeding, breeding, managing, and selling of livestock... or any products thereof;...
- (iv) Animal husbandry...."

The legal interpretation of subsection (ii) is that all four criteria, including "breeding", had to be satisfied in order to qualify. The term "animal husbandry" was not defined in the longstanding rule and potentially was subject to a range of interpretations.

The emergency rule deleted both (ii) and (iv) above and replaced it with a definition of agricultural product that allow the inclusion of income from the sale of "forage removed through the grazing of livestock, including equines." Additionally, the emergency rule required for parcels of less than twenty acres to submit reports of the value of forage removed through grazing of livestock to the county assessor.

Thus, under the emergency rule, it appears, that parcels over 20 acres that produce income from grazing and are primarily devoted to the production of agricultural commodities including forage qualify for current use valuation. For parcels under 20 acres whose qualifying income from the production of agricultural products is the sale of forage, those parcels must meet the gross income requirements applicable to that size of parcel.

To arrive at the current use value for farm and agricultural lands, there are calculations to arrive at the net cash rental value for the land. This net cash rental value is then divided by an interest rate normally charged on land mortgages to arrive at a capitalized land value. This capitalized land value then is the lands current use assessed value to which the property tax levy rate is applied. This formula was developed to determine the current use value of land that produces traditional agricultural commodities and how this formula should be applied to horse boarding operations is not specifically addressed in statute.

If the use of the land is converted to a nonqualifying use, the amount of the reduction in the property taxes saved for the seven prior years is required to be paid, plus interest. The interest rate is 12 percent per annum. If a two-year prior notice of change in use is not provided to the county assessor, an additional penalty of 20 percent is levied. There are provisions that allow a change from one classification to another without payment of additional tax.

To qualify as "open space land," there are specific criteria and a process for designation. Included in this definition is "farm and agricultural conservation land" which are lands that once qualified as "farm and agricultural lands" but no longer meet the criteria, but have not been irrevocably devoted to nonagricultural use. Approval is required from the county legislative authority to move into this category. The reduction in assessed values under this category is generally higher than for land in the regular farm and agricultural land category.

**Summary of Bill (Recommended Substitute):** On or after January 1, 2008, any land used primarily for equestrian related activities for which a charge is made, including, but not limited to, stabling, training, riding, clinics, schooling, shows, and grazing for feed that otherwise meet the requirements for their parcel categories is eligible for current use valuation as farm and agricultural land.

The discovery that land used for equestrian related activities was classified under this chapter in error and through no fault of the owner is exempt from the additional tax (recapture of seven years of reduced taxes), interest (12 percent per annum), and penalty (20 percent).

**EFFECT OF CHANGES MADE BY AGRICULTURE & RURAL ECONOMIC DEVELOPMENT COMMITTEE (Recommended Substitute):** The original bill contained two major provisions:

- any land used primarily for equestrian-related activities for which a charge is made, including, but not limited to, stabling, training, riding, clinics, schooling, shows, and grazing for feed that otherwise meet the requirements for their parcel categories is eligible for current use valuation as farm and agricultural land; and
- discovery that land used for equestrian related activities was classified under this chapter in error and through no fault of the owner is exempt from the additional tax (recapture of seven years of reduced taxes), interest (12 percent per annum), and penalty (20 percent).

The substitute bill replaced these provisions with:

- creation of a work group to make recommendations to the Legislature to address issues related to equestrian-related facilities with recommendations for proposed legislation to be submitted prior to the 2010 legislative session; and

- that the property tax treatment of owners of farm and agricultural land whose tax status changed as a result of the emergency rule adoption must be the same as their treatment for property taxes payable in 2008. This provision would be in effect for the period from December 31, 2008, to July 1, 2010.

**Appropriation:** None.

**Fiscal Note:** Requested on February 19, 2009.

**Committee/Commission/Task Force Created:** None.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** CON: This bill is opposed for many of the same reasons as provided in testimony on SB 5817. The definition of equestrian-related activity is overly broad and will allow a large number of additional land parcels to become eligible for current use valuation that were not previously eligible. This will result in an increase in property taxes to senior citizens and low income citizens. The amount of this tax shift is estimated to be about \$82 million. The statutes use formula that determine the current use value based on value of crops produced. However, this formula was not designed for income from horse boarding facilities and do not work.

**Persons Testifying:** CON: Robert Carlton, Washington Association of County Officials; Dianne Dorry, Lewis County Assessor.